

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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MICHAEL MILES	:	
Plaintiff	:	
	:	
v.	:	
	:	
BOROUGH OF DOWNINGTOWN d/b/a	:	
DOWNINGTOWN POLICE DEPARTMENT;	:	Civil Action No. 14-cv-02218
and	:	
CHESTER COUNTY d/b/a	:	
DOWNINGTOWN POLICE DEPARTMENT;	:	
and	:	
DELAWARE COUNTY;	:	
and	:	
MARTI HOWELL, individually and in his	:	
official capacity as Parole Officer for the	:	
Pennsylvania Board of Probation and Parole;	:	
and	:	
PENNSYLVANIA BOARD OF PROBATION	:	
AND PAROLE;	:	
and	:	
JOHN DOES 1-10	:	
Defendants	:	

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, upon consideration of Defendant, Delaware County's Motion to Dismiss Plaintiff's Complaint, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**. Plaintiff's Complaint is hereby **DISMISSED** with prejudice as to Defendant, Delaware County.

**BY THE COURT:**

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The Honorable William H. Yohn, Jr.

**DEFENDANT, DELAWARE COUNTY'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT**

1. Plaintiff brings this lawsuit alleging that he was unlawfully arrested on or about August 13, 2012. (*See* Plaintiff's Complaint, attached hereto as Exhibit "A").

2. Plaintiff states that police arrested him on grounds that there was a outstanding warrant in Delaware County – but Plaintiff alleges there was “*no such warrant.*” (See Exhibit “A”, ¶ 10).<sup>1</sup>
3. Plaintiff alleges that his arrest occurred because CoDefendants, “*Marti Howell, and his employer, Defendant, Pennsylvania Board of Probation and Parole, never signed off on Plaintiff’s completion of his parole requirements.*” (See Exhibit “A”, ¶ 14).
4. Plaintiff’s *Monell* action against Delaware County fails because:
  - i) Plaintiff fails to allege that any Delaware County official committed a constitutional violation; and/or
  - ii) Plaintiff alleges no facts that would state a claim for municipal liability.
5. Also, Plaintiff’s state-law claims against Delaware County fail because Delaware County is immune from intentional tort claims pursuant to the Pennsylvania Political Subdivision Tort Claims Act (“Tort Claims Act”). See 42 Pa.C.S.A. § 8541, et seq.
6. Delaware County’s supporting Memorandum of Law is incorporated by reference as though fully stated herein.

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<sup>1</sup> The Pennsylvania Administrative Office of Pennsylvania Court’s (“AOPC”) docket indicates that Judge Barry C. Dozor of the Delaware County Court of Common Pleas issued a Bench Warrant for Plaintiff on April 1, 2010; and said warrant was not rescinded until August 22, 2012. (See AOPC docket, attached hereto and made a part hereof as Exhibit “B”). Thus, per the AOPC docket, there was an outstanding warrant for Plaintiff on the alleged date of the subject arrest (i.e. August 13, 2012). Delaware County hereby places Plaintiff on notice of its intent to move for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure should Plaintiff continue to prosecute this action.

**WHEREFORE**, Defendant, Delaware County, respectfully requests that this Honorable Court grant this Motion and dismiss Plaintiff's Complaint with prejudice as to Delaware County.

Respectfully submitted,

**HOLSTEN & ASSOCIATES**

BY:

A handwritten signature in black ink, appearing to read 'P. Laffey', is written over a horizontal line.

**MICHAEL P. LAFFEY, ESQUIRE**

Attorney I.D. No.: 90225

**Holsten & Associates**

**One Olive Street**

**Media, PA 19063**

**Attorney for Defendant, Delaware County**

**CERTIFICATE OF SERVICE**

I, Michael P. Laffey, Esquire, counsel for Defendant, Delaware County, hereby state that a true and correct copy of said Defendant's Motion to Dismiss Plaintiff's Complaint, with supporting Memorandum of Law, was served upon the following individual(s) via electronically and/or United States First Class Mail, this 14<sup>th</sup> day of May, 2014:

Matthew B. Weisberg, Esquire  
David A. Berlin, Esquire  
WEISBERG LAW  
7 South Morton Avenue  
Morton, PA 19070

Christine E. Munion, Esquire  
Law Offices of William J. Ferren & Associates  
10 Sentry Parkway  
Suite 301  
Blue Bell, PA 19422

Marti Howell  
701 Crosby Street – Suite C  
Chester, PA 19013

Pennsylvania Board of Probation and Parole  
701 Crosby Street – Suite C  
Chester, PA 19013

Respectfully submitted,

HOLSTEN & ASSOCIATES

BY:



MICHAEL P. LAFFEY, ESQUIRE

Attorney I.D. No.: 90225

Holsten & Associates

One Olive Street

Media, PA 19063

Attorney for Defendant, Delaware County



*Two (2) John Does, Defendants, Downingtown police officers arrived and approached Plaintiff. They advised Plaintiff that Defendant, Delaware County, had issued a warrant to hold Plaintiff. In fact, Delaware County issued no warrant.*

(See Exhibit "A", ¶10).

The Pennsylvania Administrative Office of Pennsylvania Court's ("AOPC") docket indicates that Judge Barry C. Dozor of the Delaware County Court of Common Pleas issued a Bench Warrant for Plaintiff on April 1, 2010; and said warrant was not rescinded until August 22, 2012. (See AOPC docket, attached hereto and made a part hereof as Exhibit "B"). Thus, per the AOPC docket, there was an outstanding warrant for Plaintiff on the alleged date of the subject arrest (i.e. August 13, 2012). Delaware County hereby places Plaintiff on notice of its intent to move for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure should Plaintiff continue to prosecute this action.

Plaintiff alleges that his arrest occurred because CoDefendants, "*Marti Howell, and his employer, Defendant, Pennsylvania Board of Probation and Parole, never signed off on Plaintiff's completion of his parole requirements.*" (See Exhibit "A", ¶ 14).

Plaintiff brings a *Monell* action against Defendant, Delaware County (and the Borough of Downingtown). Plaintiff alleges, in the most abstract and conclusory terms, that there was a "*custom, policy and/or practice*" to: "*arrest and imprison citizens without probable nor any cause denying them due process.*" (See Exhibit "A", ¶ 15).

Defendant, Delaware County, now seeks dismissal of Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See F.R.Civ.P. 12(b)(6).

## II. STANDARD OF REVIEW

A party may move to dismiss a complaint for failure to state a claim upon which relief can be granted. *See* F.R.Civ.P. 12(b)(6). When considering such a motion, the Court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party.” *See DeBenedictis v. Merrill Lynch & Co., Inc.*, 492 F.3d 209, 215 (3d Cir.2007). To withstand a motion to dismiss, the complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). This “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* Although a plaintiff is entitled to all reasonable inferences from the facts alleged, a plaintiff’s legal conclusions are not entitled to deference and the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *See Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986).

The pleadings must contain sufficient factual allegations so as to state a facially plausible claim for relief. *See Gelman v. State Farm Mut. Auto. Ins. Co.*, 583 F.3d 187, 190 (3d Cir.2009). “ ‘A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’ ” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009)). In deciding a Rule 12(b)(6) motion, the Court is to limit its inquiry to the facts alleged in the complaint and its attachments, matters of public record, and undisputedly authentic documents if the complainant’s claims are based upon these documents. *See Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir.1994); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993).



### III. ARGUMENT

Plaintiff's *Monell* action against Delaware County fails because:

- i) Plaintiff fails to allege that any Delaware County official committed a constitutional violation; and/or
- ii) Plaintiff alleges no facts that would state a claim for municipal liability.

Also, Plaintiff's state-law claims against Delaware County fail because Delaware County is immune from intentional tort claims pursuant to the Pennsylvania Political Subdivision Tort Claims Act ("Tort Claims Act"). *See* 42 Pa.C.S.A. § 8541, et seq. Accordingly, Plaintiff's Complaint should be dismissed with prejudice as to Defendant, Delaware County.

1. *Plaintiff fails to allege that any DELAWARE COUNTY official committed a constitutional violation.*

*"As a matter of law, a Monell claim against municipal defendants will not lie where a plaintiff has failed to show that he has suffered a constitutional violation at the hands of any individual employee."* *See Miles v. City of Philadelphia*, 2013 WL 125186, \*5 (E.D.Pa.).

Plaintiff's *Monell* claim against Defendant, Delaware County, fails because Plaintiff fails to allege that any Delaware County employee committed a constitutional violation.

Plaintiff's *factual* allegations are quite limited. Plaintiff alleges that he was arrested by "Downingtown police officers." (*See* Exhibit "A", ¶ 10). Plaintiff alleges that he was then transported to Chester County Prison after his arrest. (*See* Exhibit "A", ¶ 11). Plaintiff states that, several days later, "Delaware County Sheriff's [sic] transferred Plaintiff to George Hill Prison." (*See* Exhibit "A", ¶ 12). Plaintiff goes on to allege that his arrest/incarceration was unlawful and occurred only because CoDefendants, "Marti Howell, and his employer, Defendant, Pennsylvania Board of Probation and Parole, never signed off on Plaintiff's completion of his parole requirements." (*See* Exhibit "A", ¶ 14).

Obviously, Plaintiff alleges no facts to state a claim for a constitutional violation against any Delaware County employee. Plaintiff alleges that he was arrested by officers for Downingtown Borough, not Delaware County. The only reference to Delaware County employees is that county sheriffs transported Plaintiff from Chester County Prison to Delaware County Prison. However, a sheriff certainly does not commit a constitutional violation by transporting a prisoner from one prison to another – especially where that prisoner had an outstanding bench warrant at the time of the transport, as Plaintiff did here. (See Exhibit “B”).

Furthermore, Defendant, Delaware County, cannot be liable under § 1983 for the alleged conduct of CoDefendants, Marti Howell and the Pennsylvania Board of Probation of Parole, because said CoDefendants are “*arms of the state*” (not County actors). See Haybarger v. Lawrence Cnty. Adult Prob. & Parole, 551 F.3d 193 (3d Cir. 2008); Henry v. Philadelphia Adult Probation and Parole Department, 2007 WL 2670140, \*4 (E.D.Pa.) (“*The PAPPD [Philadelphia Adult Probation and Parole Department] is an arm of the state.*”); Thompson v. Williams, 2013 WL 2452205, \*6 (W.D.Pa.) (dismissing *Monell* claim against Fayette County for alleged violations by the Department of Probation and Parole: “*Fayette County cannot be held accountable for the actions of a state entity and its agents over which it has no control.*”); Wallace v. Powell, 2009 WL 6850318, \*9 (M.D.Pa.).

The Court in Wallace dismissed the *Monell* claim against Luzerne County for alleged violations by Chief Juvenile Probation Officers. The Court held that Luzerne County cannot be liable for the acts of probation officers because probation officers are *state*, not county, actors. The Court specifically concluded as follows:

*Plaintiffs allege that Brulo and Loughney [Chief Probation Officers] created liability for Luzerne County by creating the rights to an attorney waiver forms, and by pressuring subordinate probation officers into making recommendations for incarceration. While it is clear that they acted as final policy-makers for the probation department, I find that they acted as state rather than county officers. Because Luzerne County may only be liable through the actions of their own final policy-makers, I find that for the purpose of these motions Brulo and Loughney were not final policy-makers.*

Id. at \*9.

... ..

*A president judge, a common pleas judge, and a chief juvenile probation officer are all state, rather than county, actors and therefore they cannot be county policy-makers.*

Id. at \*12.

Plaintiff states in his Complaint that CoDefendant, Marti Howell, was employed as a parole officer with CoDefendant, the Pennsylvania Board of Probation and Parole. (See Exhibit “A”, ¶ 6). Clearly then, both of these CoDefendants are state, not county, actors. Thus, as a matter of law, Defendant, Delaware County, cannot be liable under § 1983 for the alleged conduct of said CoDefendants.

Again, Plaintiff fails to allege that any Delaware County employee committed a constitutional violation. Thus, Plaintiff’s *Monell* claim against Delaware County necessarily fails. Accordingly, this Honorable Court should dismiss Plaintiff’s *Monell* with prejudice as to Defendant, Delaware County, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See F.R.Civ.P. 12(b)(6).

2. *Plaintiff alleges no FACTS that would state a claim for MUNICIPAL liability.*

A municipality can be liable in civil rights only when a constitutional violation results from an official policy or custom. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691-94, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). A municipal "policy" exists "*when a 'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict.*" See Andrews v. City of Phila., 895 F.2d 1469, 1480 (3d Cir. 1990). A municipal "custom" arises when, "*though not authorized by law, such practices of state officials [are] so permanent and well settled as to virtually constitute law.*" Id. To state a claim under a "policy" or "custom" theory, a plaintiff must "*identify a custom or policy, and specify what exactly that custom or policy was.*" See McTernan, 564 F.3d at 658.

A single decision by a municipal official may constitute "policy" under *Monell*, but only if the official is responsible for establishing final policy with respect to the subject matter in question. See Pembaur v. Cincinnati, 475 U.S. 469, 481-82, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986). A "custom" "*requires proof of knowledge and acquiescence by the decisionmaker.*" See McTernan, 564 F.3d at 658. An official has final policy-making authority only if he or she has "*final, unreviewable discretion*" to make decisions respecting such activity. See Andrews, 895 F.2d at 1481; Pembaur, 475 U.S. at 483; Koltonuk v. Borough of Laureldale, 443 F.Supp.2d 685, 699 (E.D.Pa. 2006). Whether an official has such authority is ultimately a question of state law. See Pembaur, 475 U.S. at 483, 106 S.Ct. 1292.

A claim of municipal liability will survive a motion to dismiss only if it "*allege[s] conduct by a municipal decisionmaker.*" See McTernan, 564 F.3d at 658. The Third Circuit has made it clear that "*absent the conscious decision or deliberate indifference of some natural person, a municipality, as an abstract entity, cannot be deemed in violation by virtue of a policy,*

*a custom, or a failure to train.” See Simmons v. City of Phila., 947 F.2d 1042, 1063 (3d Cir. 1991). Thus, a plaintiff claiming municipal liability under § 1983 “must both identify officials with ultimate policymaking authority in the area in question and adduce scienter-like evidence...with respect to them.” Id. at 1062.*

Furthermore, broad, conclusory allegations of municipal liability cannot survive a demurrer as *“formulaic recitation of the elements of a cause of action will not do.” See Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008), quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); See also Kean v. Henry, 2012 WL 646053, \*7 (E.D.Pa. 2012) (“As with his practice or custom claim, Kean’s failure to train claim must fail because he alleges no facts to show deliberate indifference, despite applying the appropriate legal jargon to label it as such.”); Becerril v. Mancini, 2008 WL 5250272 (E.D.Pa.) (where the Court dismissed a Monell claim on the ground that general allegations of unlawful policies and/or practices were insufficient); Hart v. Tannery, 2011 WL 940311, \*9 (E.D.Pa.) (“A declaration that Defendants’ actions rose to the level of an official policy or custom is insufficient to support liability under § 1983.”); Winslow v. the Borough of Malvern PA, 2009 WL 4609590, \*6 (E.D.Pa.) (“These are merely formulaic recitations of the elements of a Monell claim and, under Twombly, are insufficient to withstand a motion to dismiss.”).*

Here, Plaintiff alleges, in the most abstract and conclusory terms, that there was a *“custom, policy and/or practice”* to: *“arrest and imprison citizens without probable nor any cause denying them due process.”* (See Exhibit “A”, ¶ 15). These allegations are clearly insufficient to survive a demurrer. The Court in Kean, supra (E.D.Pa. 2012) was confronted with such broad, conclusory allegations of municipal liability. The plaintiffs in Kean alleged as follows:

- *“After the formation of the Regional Police and due to Kean’s public opposition to the force, the Regional Police began a pattern, policy practice and/or custom of refusing to respond to Kean’s requests for police assistance and/or harassing Kean.”*
- *“Lyons was acting upon Elizabethtown Borough’s custom, practice and policy in conspiracy with West Donegal Township and Mount Joy Township to harass Kean.”*
- *“The comments of the police office and state police lieutenant confirmed Kean’s suspicion that West Donegal Township, Mount Joy Township, and Elizabeth[town] Borough had enacted a policy, custom and practice to harass Kean in retaliation for Kean’s opposition to the merger.” and*
- *“The Comments of the police officer and state police lieutenant evidence a policy and/or practice of harassing and retaliation against an individual that offers political opposition.”*

Id. at \*4.

The Court in Kean sustained a demurrer to said allegations, concluding as follows:

*Plaintiffs do not cite any unlawful policy as the source of their injuries. (FN5. As noted below, the Amended Complaint does reference “policy” in several places, but no actual policy is ever cited. See Am. Compl. ¶¶ 27, 51, 56, 58.).*

Id.

... ..

*Despite employing appropriate vocabulary, Plaintiffs fail to allege any facts from which the Court could conclude that West Donegal, Mount Joy or Elizabethtown condoned or was otherwise responsible for such a “well-settled and permanent” custom “as virtually to constitute law.” [emphasis added].*

... ..

*Furthermore, Kean fails to allege any facts that suggest a municipal decisionmaker’s personal knowledge of the unlawful conduct alleged here. [emphasis added]. The Amended Complaint simply paraphrases § 1983, and “formulaic recitation of the elements of a cause of action will not do.” As Kean “does not adequately plead a custom or policy, or a link between the challenged restriction and a municipal decisionmaker, the restriction cannot fairly be said to represent official policy, warranting the imposition of municipal liability.” (citations omitted).*

Id. at \*5.

The Court in Kean then went on to dismiss the plaintiffs’ “policy” and/or “custom” claims with prejudice. Id. \*8.

Like the plaintiffs in Kean, Plaintiff here pleads no facts that would state a claim of municipal liability under *Monell*. Plaintiff’s allegation that there was a “policy” and/or “custom” to “*arrest and imprison citizens without probable nor any cause denying them due process*” – is nothing more than a bald, legal conclusion that is entitled to no deference. Plaintiff cites no actual policy by any person with final, unreviewable, decision-making authority for Delaware County. Indeed, Plaintiff fails to identify any policymaker for Defendant, Delaware County. Despite Plaintiff’s use of the word “custom” in the Complaint, Plaintiff alleges no facts to

suggest the existence of any “*well-settled and permanent*” practice of subjecting persons to excessive force. In fact, the only incident referenced in Plaintiff’s Complaint is the one involving him.

Plaintiff asserts nothing more than legal jargon against Delaware County and, as a matter of law, “*a formulaic recitation of the elements of a cause of action will not do.*” See Twombly, supra. Accordingly, this Honorable Court should dismiss Plaintiff’s *Monell* with prejudice as to Defendant, Delaware County, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See F.R.Civ.P. 12(b)(6).

3. **Delaware County is immune from Plaintiff’s state-law intentional tort claims.**

Plaintiff asserts state-law claims against Defendant, Delaware County, for: “*false arrest;*” “*false imprisonment;*” and “*wrongful search and seizure.*” Plaintiff is clearly alleging intentional torts, not negligence. However, all of Plaintiff’s state-law claims against Delaware County fail because said Defendant is immune from intentional torts pursuant to the Pennsylvania Political Subdivision Tort Claims Act. See 42 Pa.C.S.A. § 8541, et seq.; See also Rosembert v. Borough of East Lansdowne, 2014 WL 1395032, \*6 (E.D.Pa.) (“*The Tort Claims Act provides that local government agencies are immune from suit for the intentional torts committed by its employees.*” citing Lazarde v. City of Reading, 2012 WL 4473246, \*6 (E.D.Pa.)); Douris v. Schweiker, 229 F.Supp.2d 391, 403 (“*Count IV against Defendants Bucks County and DA’s Office therefore will be dismissed because of their immunity under the PSTCA for the intentional torts of malicious prosecution, abuse of process, and conspiracy.*”).

Accordingly, this Honorable Court should dismiss Plaintiff’s state-law claims with prejudice as to Defendant, Delaware County, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See F.R.Civ.P. 12(b)(6).



IV. **CONCLUSION**

Plaintiff's *Monell* action against Defendant, Delaware County, fails because Plaintiff fails to allege that any Delaware County official committed a constitutional violation.

Plaintiff's *Monell* action against Defendant, Delaware County, fails also because Plaintiff alleges no facts that would state a claim for municipal liability.

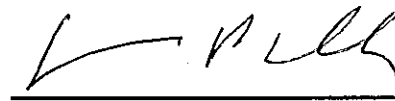
Plaintiff's state-law claims against Defendant, Delaware County, fail because said Defendant is immune from intentional torts pursuant to the Tort Claims Act.

Accordingly, this Honorable Court should dismiss Plaintiff's Complaint with prejudice as to Defendant, Delaware County.

Respectfully submitted,

HOLSTEN & ASSOCIATES

BY:



MICHAEL P. LAFFEY, ESQUIRE

Attorney I.D. No.: 90225

Holsten & Associates

One Olive Street

Media, PA 19063

Attorney for Defendant, Delaware County

# **EXHIBIT “A”**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

---

Michael Miles  
721 Lincoln Highway #2  
Coatesville, PA 19320

Plaintiff,

v.

Borough of Downingtown  
d/b/a Downingtown Police Department  
10 W. Lancaster Ave.  
Downingtown, PA 19335

And

Chester County  
d/b/a Downingtown Police Department  
313 West Market Street, Suite 6302  
West Chester, PA 19380

And

Delaware County  
201 West Front Street  
Media, PA 19063

And

Marti Howell, individually and in his official  
capacity as Parole Officer for the  
Pennsylvania Board of Probation and Parole  
701 Crosby Street – Suite C  
Chester, PA 19013

And

Pennsylvania Board of Probation and Parole  
701 Crosby Street – Suite C  
Chester, PA 19013

And

John Does 1-10

Civil Action No.:

**JURY TRIAL DEMANDED**

Defendants. :

**CIVIL ACTION COMPLAINT**

**I. Jurisdiction and Venue**

1. Jurisdiction in this Honorable Court is based on a violation of federal law conferred by 28 U.S.C. §1331.

2. Venue lies in this district in that the events giving rise to this claim occurred here, at least one (1) Defendant resides, maintains a principal place of business, and/or does business here, and/or the property which is the subject of this action is situated within this district.

**II. Parties**

3. Plaintiff, Michael Miles, is an adult individual, currently residing at the above captioned address.

4. Defendants, Borough of Downingtown and Chester County, are municipalities doing business as Downingtown Police Department, located at the above captioned addresses.

5. Defendant, Delaware County, is a municipality located at the above captioned address.

6. Defendant, Marti Howell, is an adult individual who, at all times material herein, acted individually, and/or as an agent, servant, workman, and/or employee of Defendant, Pennsylvania Board of Probation and Parole, as well as in his official capacity as parole officer, acting under color of State law.

7. Defendants, John Does 1-10, is a moniker/fictitious name for individuals and entities currently unknown but will be substituted when known, as affiliated, associated or liable hereunder for the reasons set forth below or inferred therefrom. Each of these parties are incorporated as Defendants in each and every count and averment listed above and below. Upon

information and belief, Defendants, John Does, were agents, servants, workmen, or employees of Co-Defendant, liable to Plaintiff hereunder.

### **III. Operative Facts**

8. On or about August 13, 2012, Plaintiff was attending a family reunion in a public park when an argument started between Plaintiff's family members and some teenagers.

9. Upon information and belief, the teenagers called Defendant, Downingtown Police.

10. Two (2) John Does, Defendants, Downingtown police officers arrived and approached Plaintiff. They advised Plaintiff that Defendant, Delaware County, had issued a warrant to hold Plaintiff. In fact, Delaware County issued no such warrant. Plaintiff then asked Defendants what the warrant regarded. Defendants responded, "I don't know."

11. Plaintiff was transported by the police officers to Chester County Prison – where Plaintiff remained for several days – without explanation or a hearing.

12. Eventually the Delaware County Sheriff's transferred Plaintiff to George Hill Prison, where Plaintiff remained for approximately 17 more days – again, without explanation nor a hearing.

13. Finally, after more than two (2) weeks, two (2) guards approached Plaintiff and told him "you're free to go." Upon information and belief, Defendants realized there was no active warrant for Plaintiff. Defendants released Plaintiff without verbal or written explanation.

14. Upon information and belief, when Plaintiff's former parole officer, Defendant, Marti Howell, and his employer, Defendant, Pennsylvania Board of Probation and Parole, never signed off on Plaintiff's completion of his parole requirements prior to Howell's retirement, a violation was issued (in fact, Plaintiff completed all parole requirements).

15. The conduct of Defendants was part of a custom, policy and/or practice and these customs, policies or practices caused the violations of Plaintiff's rights. Specifically, Defendants arrest and imprison citizens without probable nor any cause denying them due process.

16. As a result of Defendants' actions, Plaintiff nearly lost his job, lost wages during imprisonment, and suffered emotional distress.

**IV. Causes of Action**

**COUNT I**  
**False Arrest**  
**(Federal and State Law)**

17. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

18. Defendants lacked probable cause to arrest Plaintiff.

19. Plaintiff had not committed any infraction or otherwise to legally justify his arrest by Defendants.

20. Defendants intentionally arrested Plaintiff for a purpose other than bringing Plaintiff to justice.

21. Defendants caused Plaintiff to suffer false arrest by their wrongful conduct all in violation of the Fourth and Fourteenth Amendment of the United States Constitution, actionable through 42 U.S.C. §1983, et seq., as well as state law.

**COUNT II**  
**False Imprisonment**  
**(Federal and State Law)**

22. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

23. Defendants lacked probable cause to arrest Plaintiff.

24. Plaintiff had not committed any infraction or otherwise to legally justify his arrest by Defendants.

25. Defendants intentionally deprived Plaintiff of his liberty for a purpose other than bringing Plaintiff to justice.

26. Defendants caused Plaintiff to suffer false arrest by their wrongful conduct all in violation of the Fourth and Fourteenth Amendment of the United States Constitution, actionable through 42 U.S.C. §1983, et seq., as well as state law.

**COUNT III**  
***Monell***

27. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

28. Prior to the events described herein, Defendants, Borough of Downingtown and County of Delaware, developed and maintained policies, practices, procedures and customs exhibiting deliberate indifference to the Constitutional rights of persons within the geographic and jurisdictional limits of the Borough of Downingtown and County of Delaware, which caused violations of Plaintiff's constitutional and other rights.

29. The above described acts or omissions by Defendants, demonstrated a deliberate indifference to the rights of citizens, such as Plaintiff, and were the cause of the violations of Plaintiff's rights as set forth herein.

30. Plaintiff suffered harm due to Defendants' conduct.

**COUNT IV**  
**Malicious Prosecution**

31. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

32. At the time of Defendants' investigation, arrest, charges, and imprisonment, Plaintiff had not committed any infraction to legally justify the incarceration and charges.

33. Defendants' actions stated above, *inter alia*, were committed under color of state law and were violations of Plaintiff's clearly established and well-settled Constitutional and other legal rights.

34. Defendants caused Plaintiff to suffer a malicious prosecution by their wrongful conduct in subjecting Plaintiff to false criminal charges, all in violation of the Fourth and Fourteenth Amendments to the United States Constitution.

35. Defendants instituted criminal action against Plaintiff by way of failing to properly investigate the alleged obstructing administration of law/governmental function.

36. Plaintiff was seized from the time he was arrested through the time he was imprisoned.

37. Defendants did not have probable nor any cause to arrest, charge, and/or accuse Plaintiff of the criminal acts.

38. The criminal action terminated in Plaintiff's favor after Defendants released Plaintiff from prison without verbal or written explanation.

**COUNT V**  
**Wrongful Search and Seizure**  
**(Federal and State Law)**

39. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.

40. Defendants caused Plaintiff to suffer false arrest by their wrongful conduct all in violation of the Fourth and Fourteenth Amendment of the United States Constitution, actionable through 42 U.S.C. §1983, et seq., as well as state law.



**COUNT VI**

**Violation of Due Process under the U.S. Constitution Amendments IV and XIV**

41. Plaintiff incorporates by reference all prior paragraphs as if fully set forth at length herein.
42. Defendants arrested and imprisoned Plaintiff without probable nor any cause denying him due process.
43. To perpetuate its misconduct, Defendant, clothed themselves with color of state authority through the use of the Borough of Downingtown and County of Delaware.
44. Defendants' willful, reckless and malicious actions were made in an effort to deprive Plaintiff of its rights as set forth above and pursuant to U.S. Const. Amends. IV and XIV.

**V. Prayer for Relief**

**WHEREFORE**, Plaintiff respectfully requests this Honorable Court enter judgment in his favor and against Defendants, individually, jointly and severally, in an amount in excess of seventy-five thousand dollars (\$75,000), plus such other and further relief as this Honorable Court deems necessary and just, and to Order the following relief:

- a. Statutory damages;
- b. Compensatory damages, including:
  - i. Actual damages for financial and physical injuries, including but not limited to wage loss and loss of earning capacity, and emotional distress;
  - ii. Attorneys' fees and expenses, and costs of suit.
- c. Injunctive relief, including:
  - i. Monitoring and training.

**WEISBERG LAW**

/s/ Matthew B. Weisberg  
Matthew B. Weisberg, Esquire  
David A. Berlin, Esquire  
Attorneys for Plaintiff

# **EXHIBIT “B”**

## COURT OF COMMON PLEAS OF DELAWARE COUNTY

## DOCKET



Docket Number: CP-23-CR-0005903-2006

## CRIMINAL DOCKET

Court Case

Commonwealth of Pennsylvania

v.

Michael Miles

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## CASE INFORMATION

Judge Assigned: Dozor, Barry C.Date Filed: 08/25/2006Initiation Date: 08/05/2006OTN: K 450016-0LOTN:Originating Docket No: MJ-32136-CR-0000397-2006Initial Issuing Authority: Judge MigratedFinal Issuing Authority: Judge MigratedArresting Agency: Upper Chichester Twp Police DeptArresting Officer: Smoak, Hurley L.Complaint/Incident #: UC0613288Case Local Number Type(s)Case Local Number(s)

## STATUS INFORMATION

Case Status:	Active	Status Date	Processing Status	Arrest Date:	08/05/2006
		08/22/2012	Warrant Rescinded		
		09/24/2007	Sentenced/Penalty Imposed		
		09/24/2007	Awaiting Sentencing		
		11/22/2006	Awaiting Trial		
		10/23/2006	Awaiting Trial Scheduling		
		08/25/2006	Awaiting Formal Arraignment		
		08/25/2006	Awaiting Filing of Information		

Complaint Date: 08/05/2006

## CALENDAR EVENTS

Case Calendar	Schedule	Start	Room	Judge Name	Schedule
Event Type	Start Date	Time			Status
Formal Arraignment	10/19/2006	9:00 am			Scheduled
Pre-Trial	11/20/2006	9:00 am	Courtroom 1	Judge Barry C. Dozor	Scheduled
Conference					
Trial	01/22/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Moved
Trial	04/02/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Continued
Trial	04/16/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Moved
Trial	05/07/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Continued
Trial	06/25/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Continued
Trial	07/23/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Continued
Trial	09/24/2007	9:00 am	Courtroom 1	Judge Barry C. Dozor	Scheduled

## CONFINEMENT INFORMATION

Confinement	Confinement	Destination	Confinement	Still in
Known As Of	Type	Location	Reason	Custody

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## DEFENDANT INFORMATION

Date Of Birth:

City/State/Zip:

Alias Name

Miles, Michael Owen

## CASE PARTICIPANTS

Participant Type	Name
Defendant	Miles, Michael

## BAIL INFORMATION

Miles, Michael

Nebbia Status: None

Bail Action	Date	Bail Type	Percentage	Amount	Bail Posting Status	Posting Date
Set	08/05/2006	Monetary		\$500,000.00		

## CHARGES

Seq.	Orig Seq.	Grade	Statute	Statute Description	Offense Dt.	OTN
1	1	M1	18 § 901 §§A	Criminal Attempt - Criminal Homicide	08/05/2006	K 450016-0
2	5	F1	18 § 2702 §§A1	Aggravated Assault	08/05/2006	K 450016-0
3	2	F3	18 § 3503 §§A11	Crim Tres-Enter Structure	08/05/2006	K 450016-0
4	3	F3	18 § 3503 §§A11	Crim Tres-Enter Structure	08/05/2006	K 450016-0
5	4	F3	18 § 901 §§A	Criminal Attempt - Crim Tres-Enter Structure	08/05/2006	K 450016-0
6	8	M1	18 § 907 §§A	Poss Instrument Of Crime W/Int	08/05/2006	K 450016-0
7	6	M2	18 § 2701 §§A1	Simple Assault	08/05/2006	K 450016-0
8	7	M2	18 § 2705	Recklessly Endangering Another Person	08/05/2006	K 450016-0

## DISPOSITION SENTENCING/PENALTIES

## Disposition

Case Event	Disposition Date	Final Disposition
Sequence/Description	Offense Disposition	Grade Section
Sentencing Judge	Sentence Date	Credit For Time Served
Sentence/Diversion Program Type	Incarceration/Diversionary Period	Start Date
Sentence Conditions		

## Lower Court Proceeding (generic)

Lower Court Disposition	08/22/2006	Not Final
1 / Criminal Attempt - Criminal Homicide	Held for Court (Lower Court)	M1 18 § 901 §§ A
2 / Aggravated Assault	Held for Court (Lower Court)	F1 18 § 2702 §§ A1
3 / Crim Tres-Enter Structure	Held for Court (Lower Court)	F3 18 § 3503 §§ A11

CPCMS 9082

Printed: 05/06/2014

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## DISPOSITION SENTENCING/PENALTIES

## Disposition

<u>Case Event</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
<u>Sequence/Description</u>	<u>Offense Disposition</u>	<u>Grade</u>	<u>Section</u>
<u>Sentencing Judge</u>	<u>Sentence Date</u>	<u>Credit For Time Served</u>	
<u>Sentence/Diversion Program Type</u>	<u>Incarceration/Diversionary Period</u>	<u>Start Date</u>	
<u>Sentence Conditions</u>			
4 / Crim Tres-Enter Structure	Held for Court (Lower Court)	F3	18 § 3503 §§ A11
5 / Criminal Attempt - Crim Tres-Enter Structure	Held for Court (Lower Court)	F3	18 § 901 §§ A
6 / Poss Instrument Of Crime W/Int	Held for Court (Lower Court)	M1	18 § 907 §§ A
7 / Simple Assault	Held for Court (Lower Court)	M2	18 § 2701 §§ A1
8 / Recklessly Endangering Another Person	Held for Court (Lower Court)	M2	18 § 2705

## Proceed to Court

<u>Information Filed</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
1 / Criminal Attempt - Criminal Homicide	10/19/2006	Not Final	
2 / Aggravated Assault	Proceed to Court	M1	18 § 901 §§ A
3 / Crim Tres-Enter Structure	Proceed to Court	F1	18 § 2702 §§ A1
4 / Crim Tres-Enter Structure	Proceed to Court	F3	18 § 3503 §§ A11
5 / Criminal Attempt - Crim Tres-Enter Structure	Proceed to Court	F3	18 § 3503 §§ A11
6 / Poss Instrument Of Crime W/Int	Proceed to Court	F3	18 § 901 §§ A
7 / Simple Assault	Proceed to Court	M1	18 § 907 §§ A
8 / Recklessly Endangering Another Person	Proceed to Court	M2	18 § 2701 §§ A1
		M2	18 § 2705

## Guilty Plea

<u>Trial</u>	<u>Disposition Date</u>	<u>Final Disposition</u>	
1 / Criminal Attempt - Criminal Homicide	09/24/2007		
Dozor, Barry C.	Nolle Prossed	M1	18 § 901 §§ A
	09/24/2007		
2 / Aggravated Assault	Nolle Prossed	F1	18 § 2702 §§ A1
Dozor, Barry C.	09/24/2007		
3 / Crim Tres-Enter Structure	Guilty Plea	F3	18 § 3503 §§ A11
Dozor, Barry C.	09/24/2007	350 Days	
Confinement	Min of 11.00 Months 15.00 Days		
	Max of 23.00 Months		
	11 1/2 - 23 Months		
Have no direct or indirect contact with Dannyette Lions and Lonnie Ricks.			
Comply with following directive(s) of Court:Credit for time served-350 days from 8/5/06 to 7/20/07.			
4 / Crim Tres-Enter Structure	Nolle Prossed	F3	18 § 3503 §§ A11
Dozor, Barry C.	09/24/2007		
5 / Criminal Attempt - Crim Tres-Enter Structure	Nolle Prossed	F3	18 § 901 §§ A
Dozor, Barry C.	09/24/2007		

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## DISPOSITION SENTENCING/PENALTIES

## Disposition

Case Event	Disposition Date	Final Disposition	
Sequence/Description	Offense Disposition	Grade	Section
Sentencing Judge	Sentence Date	Credit For Time Served	
Sentence/Diversion Program Type	Incarceration/Diversionary Period	Start Date	
Sentence Conditions			
6 / Poss Instrument Of Crime W/Int	Nolle Prossed	M1	18 § 907 §§ A
Dozor, Barry C.	09/24/2007		
7 / Simple Assault	Guilty Plea	M2	18 § 2701 §§ A1
Dozor, Barry C.	09/24/2007		
Probation	Max of 2.00 Years		
	2 Years		
8 / Recklessly Endangering Another Person	Nolle Prossed	M2	18 § 2705
Dozor, Barry C.	09/24/2007		

## LINKED SENTENCES:

## Link 1

CP-23-CR-0005903-2006 - Seq. No. 7 (18§ 2701 §§ A1) - Probation is Consecutive to

CP-23-CR-0005903-2006 - Seq. No. 3 (18§ 3503 §§ A1) - Confinement

## COMMONWEALTH INFORMATION

Name: Erica Giddens Parham  
District Attorney  
Supreme Court No: 060686  
Phone Number(s):  
610-891-4181 (Phone)  
Address:  
Delaware County District Attorney's Office  
201 W Front Street  
Media, PA 19063

Name: Wana Saadzo  
District Attorney

Supreme Court No: 090650

Phone Number(s):  
610-891-4205 (Phone)

Address:  
DE Co DA's Office  
201 W Front Street  
Media, PA 19063

## ATTORNEY INFORMATION

Name: David S. Daniel  
Public Defender

Supreme Court No: 082777Rep. Status: Active

Phone Number(s):  
610-627-1474 (Phone)

Address:  
Delaware County Public Defender's Office  
DE Co Public Defender's Ofc  
313 W Front Street  
Media, PA 19063

Representing: Miles, Michael

## ENTRIES

Sequence Number      CP Filed Date      Document Date      Filed By



**COURT OF COMMON PLEAS OF DELAWARE COUNTY****DOCKET**

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**ENTRIES**

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	08/25/2006		Court of Common Pleas - Delaware County
	Original Papers Received from Lower Court		
1	10/19/2006		Commonwealth of Pennsylvania
	Information Filed		
1	10/20/2006		Delaware County Court Administration
	Criminal Notice/ Pre-Trial Conference; 11/20/06, 9:30 AM, Courtroom TBA, J. Dozor		
1	11/02/2006		Daniel, David S.
	Entry of Appearance		
1	11/21/2006		Dozor, Barry C.
	Criminal notice/trial 1/22/07, 9am, Crtrm TBA, J. Dozor		
1	12/06/2006		MDJ-32-1-36
	Transcript from Lower Court 32-1-36, DJ Griffin, August 22. 2006, 31 pages		
1	01/23/2007		Dozor, Barry C.
	Criminal notice/trial 4/2/07, 9am, Crtrm TBA, J. Dozor		
2	04/02/2007		Dozor, Barry C.
	Criminal notice/jury-trial 4/16/07, 9am, Crtrm TBA, J. Dozor		
3	04/02/2007		Miles, Michael
	Waiver of Rule 600 and Speedy Trial Rights Filed		
1	04/17/2007		Dozor, Barry C.
	Criminal notice/trial 5/7/07, 9am, Crtrm TBA, J. Dozor		
1	05/07/2007		Dozor, Barry C.
	Criminal notice/trial 6/25/07, 9am, Crtrm TBA, J. Dozor		
2	05/07/2007		Miles, Michael
	Waiver of Rule 600 and Speedy Trial Rights Filed		
2	06/25/2007		Dozor, Barry C.
	Criminal notice/trial 7/23/07, 9am, Crtrm TBA, J. Dozor		

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## ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
3	06/25/2007		Miles, Michael
Waiver of Rule 600 and Speedy Trial Rights Filed			
1	07/23/2007		Dozor, Barry C.
Criminal notice/trial 9/24/07, 9am, Crtrm TBA, J. Dozor			
2	07/23/2007		Miles, Michael
Waiver of Rule 600 and Speedy Trial Rights Filed			
1	09/24/2007		Miles, Michael
Guilty Plea Statement Filed			
2	09/24/2007		Miles, Michael
Statement of Post-Sentence Rights Filed			
3	09/24/2007		Dozor, Barry C.
Guilty Plea			
4	09/24/2007		Dozor, Barry C.
Disposition Filed			
5	09/24/2007		Dozor, Barry C.
Order - Sentence/Penalty Imposed			
1	09/28/2007		Dozor, Barry C.
Guideline Sentence Form			
1	11/08/2007	10/30/2007	Dozor, Barry C.
Order Granting Parole to a Detainer from the Pennsylvania Board of Probation and Parole			
Commonwealth of Pennsylvania			
11/08/2007			
Daniel, David S.			
11/08/2007			
Miles, Michael			
11/08/2007			
1	07/02/2008	01/18/2008	Dozor, Barry C.
Transcript, 01/18/08, J. Dozor, Crtrm. 1, 23 pages			



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## ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1	04/01/2010		Dozor, Barry C.
Bench Warrant Issued			
VIOL STATE PAROLE			
-----			
1	08/22/2012		Pagano, George A.
Order Rescinding Bench Warrant			
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## CASE FINANCIAL INFORMATION

Last Payment Date:			Total of Last Payment:		
Miles, Michael Defendant	Assessment	Payments	Adjustments	Non Monetary Payments	Total
<b>Costs/Fees</b>					
Constable (Delaware)	\$181.50	\$0.00	\$0.00	\$0.00	\$181.50
Automation OJS Fee (Delaware)	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
District Attorney (Delaware)	\$110.00	\$0.00	\$0.00	\$0.00	\$110.00
OSP (Delaware/State) (Act 35 of 1991)	\$612.50	\$0.00	\$0.00	\$0.00	\$612.50
OSP (Delaware/State) (Act 35 of 1991)	\$612.50	\$0.00	\$0.00	\$0.00	\$612.50
Sheriff (Delaware)	\$40.00	\$0.00	\$0.00	\$0.00	\$40.00
State Court Costs (Act 204 of 1976)	\$11.09	\$0.00	\$0.00	\$0.00	\$11.09
Commonwealth Cost - HB627 (Act 167 of 1992)	\$16.64	\$0.00	\$0.00	\$0.00	\$16.64
County Court Cost (Act 204 of 1976)	\$24.27	\$0.00	\$0.00	\$0.00	\$24.27
Crime Victims Compensation (Act 96 of 1984)	\$35.00	\$0.00	\$0.00	\$0.00	\$35.00
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	\$0.00	\$0.00	\$0.00	\$10.00
Victim Witness Service (Act 111 of 1998)	\$25.00	\$0.00	\$0.00	\$0.00	\$25.00
Firearm Education and Training Fund	\$5.00	\$0.00	\$0.00	\$0.00	\$5.00
Judicial Computer Project	\$8.00	\$0.00	\$0.00	\$0.00	\$8.00
ATJ	\$2.00	\$0.00	\$0.00	\$0.00	\$2.00
DNA Detection Fund (Act 185-2004)	\$250.00	\$0.00	\$0.00	\$0.00	\$250.00
Clerk of Courts - Felony (Delaware)	\$185.00	\$0.00	\$0.00	\$0.00	\$185.00
Bench Warrant (Delaware)	\$75.00	\$0.00	\$0.00	\$0.00	\$75.00
Sheriff Apprehension (Delaware)	\$59.00	\$0.00	\$0.00	\$0.00	\$59.00
Costs/Fees Totals:	\$2,267.50	\$0.00	\$0.00	\$0.00	\$2,267.50
Grand Totals:	\$2,267.50	\$0.00	\$0.00	\$0.00	\$2,267.50

\*\* - Indicates assessment is subrogated